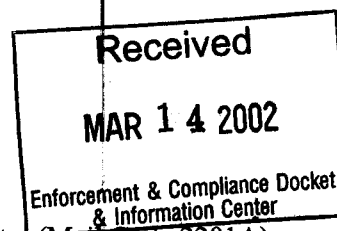




February 27, 2002

CERTIFIED MAIL

U.S. Environmental Protection Agency  
Enforcement and Compliance Docket & Information Center (Mail Code 2201A)  
ATTN: Docket Number EC-2000-007  
1200 Pennsylvania Avenue NW  
Washington, DC 20460



Subject: Establishment of Electronic Reporting; Electronic Records (66 FR 46162)

Dear Sir or Madam:

The South Carolina Chamber of Commerce Environmental Technical Committee (Chamber) represents over two thousand companies having facilities in South Carolina. The Chamber appreciates the opportunity to comment on the proposed rule "Establishment of Electronic Reporting; Electronic Records," dated August 31, 2001, 66 FR 46162. As proposed, the Chamber believes the record-keeping requirements of this rule would be mandatory rather than voluntary, and the compliance costs would be prohibitive with no corresponding business value. We strongly oppose the record-keeping portion of this rule and request that the Agency withdraw such requirements, for the reasons stated below.

**A. RECORD-KEEPING PORTION OF RULE IS MANDATORY, NOT VOLUNTARY**

The Chamber believes that EPA has underestimated the voluntary nature and broad scope of the record-keeping portion of this rule, given its discussion in the preamble of criteria that facilities must adhere to if they maintain electronic records in lieu of paper records, and given the proposed definition of an electronic record. First, EPA states:

*Regulated entities that use electronic systems to create, modify, maintain, or transmit electronic records will need to employ procedures and controls designed to meet the minimum criteria in today's rule. (66 FR 46169)*

*Electronic record means any combination of text, graphics, data, audio, pictorial, or other information represented in digital form that is created, modified, maintained, archived, retrieved or distributed by a computer system. (66 FR 46189)*

Many facilities currently use electronic systems to create, modify, maintain and sometimes even transmit to the regulating agency electronic records, based on the proposed definition of electronic records. This would then subject facilities to EPA's proposed criteria for electronic record-retention systems. Those nine criteria are listed in proposed Subpart C, Section 3.100 (66 FR 46190), and there is no instance where any electronic record currently generated by many facilities would satisfy all those criteria. EPA has totally misrepresented the application of the record-keeping portions of this rule to the regulated community. Given that misrepresentation, we urge the Agency to withdraw the record-keeping provisions of the proposed rule.

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**B. EPA HAS UNDERESTIMATED THE COST IMPACTS OF THIS RULE**

EPA estimates that:

*The average annual cost to implement a new electronic record keeping system is \$40,000 for each facility, and the net average annual cost savings for operating the electronic record keeping system is \$23,080. . . our estimates indicate that implementation of electronic reporting will result in a net burden reduction for all participants, but facilities may not find it cost-effective to develop an electronic records system unless it addresses both EPA and non-EPA business purposes. (66 FR 46178)*

The Chamber disagrees with EPA's average annual costs of compliance, believes it would actually be much higher, but agrees that many facilities would not find it cost-effective to develop an electronic records system as proposed by EPA, had they none in place already, and if that choice existed. As stated earlier, we believe the record-keeping portion of the rule is not voluntary as written, but mandatory. Electronic record keeping is already part of the culture for most companies. The Chamber foresees no significant benefits resulting from EPA's electronic record-keeping proposal.

Many of the affected facilities would be small, yet EPA states that today's rule is not subject to the Regulatory Flexibility Act (RFA) because "*this rule will not have a significant economic impact on a substantial number of small facilities.*" EPA also states that "*. . . this rule is a 'significant regulatory action' because it raises novel legal and/or policy issues.*" The Chamber believes EPA is required to conduct an RFA because of the impacts imposed on a very large number of small facilities, and we believe this is a significant regulatory action for the additional reason of compliance costs.

**C. ELECTRONIC RECORD KEEPING REQUIRES NO ADDITIONAL REGULATION**

It appears EPA does not understand the extensive use in today's world of electronic reporting and record keeping as evidenced by this statement:

*Any regulated company or other entity that maintains records addressed by today's proposal . . . under EPA regulations can store them in an electronic form subject to the proposed criteria for electronic record-keeping as soon as EPA announces that the specified records may be kept electronically. (66 Fr 46167) EPA further states:*

*Records subject to this rule maintained under an authorized State or tribal program can only be maintained electronically once EPA has approved the necessary changes to the authorized program. (66 FR 46168)*

Electronic record keeping is so commonplace that inspectors and regulators accept such records routinely. EPA should be aware of its own regulations that already require electronic reporting. One example is under the Continuous Emission Monitoring requirements at 40 CFR Part 75. Quarterly electronic reporting is required under these standards.

A driver for this proposal is the requirement under the Government Paperwork Elimination Act (GPEA) of 1998 that agencies be prepared to allow electronic reporting and record keeping under their regulatory programs by October 21, 2003. Yet, the GPEA says very little about record keeping, simply that:

*"[A]gencies [shall] provide. . . for the option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper;" (§1704(1) and*

*"Electronic records submitted or maintained in accordance with procedures developed under this title, or electronic signatures or other forms of electronic authentication used in accordance with such procedures, shall not be denied legal effect, validity, or enforceability because such records are in electronic form." (§1707)*

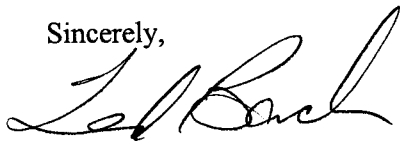
It is Eastman's opinion that EPA has gone far beyond the GPEA requirements in this proposal and that the agency can only require security equivalent to that present with paper records. Thus, no additional requirements are necessary.

**D. EPA MUST WITHDRAW RECORD-KEEPING PORTION OF RULE AND  
REPROPOSE IF ANY SIGNIFICANT NEW REQUIREMENTS ARE  
BELIEVED NECESSARY**

EPA states in this proposal that the record-keeping requirements will be voluntary, thus affecting only an estimated 428 facilities that would likely choose to implement the electronic records provisions. As discussed previously, the proposal as written is mandatory rather than voluntary, and a very large number of facilities will be impacted, including small facilities. Thus, EPA is incorrect in its statement that "Today's rule is not subject to the RFA [Regulatory Flexibility Act]" and "... this rule will not have a significant economic impact on a substantial number of small entities." (66 FR 46186, Column 2) The compliance costs for many facilities could be in the millions of dollars for remediation and replacement of many existing systems/software. The Chamber anticipates some situations where compliance is simply not possible.

Because of the mandatory nature of the rule, the significant error in estimating compliance costs and resultant impacts, and the failure to complete required analyses, The Chamber believes the agency has no choice but to withdraw the record-keeping portion of this proposal. Prior to any potential proposed rule changes, the Agency should develop a greater understanding of current record-keeping practices and to work with the regulated community and other stakeholders in determining if any new requirements are actually necessary in regulating electronic record-keeping systems.

Sincerely,



Ted Bach  
Water Subcommittee Chairman  
Environmental Technical Committee  
South Carolina Chamber of Commerce

cc: Carl Blackstone – SC Chamber of Commerce  
Jack Preston – SC Electric & Gas